IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

WP(C).No. 27630 of 2005(L)

PETITIONER:

SHAJI STEPHEN, PROPRIETOR, ARCHANA
RUBBER PRODUCTS, KARIMKUNNAM P.O., THODUPUZHA,
IDUKKI DISTRICT.

BY ADV. SRI.V.P.SUKUMAR
SRI.JAIRAM.V.MENON

RESPONDENTS:

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1. THE ADDITIONAL SALES TAX OFFICER,
THODUPUZHA.

2. THE DISTRICT LEVEL COMMITTEE FOR SALES
TAX EXEMPTION REPRESENTED BY THE GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE, IDUKKI COLONY P.O.,
IDUKKI DISTRICT.

3. THE STATE LEVEL COMMITTEE FOR SALES TAX
EXEMPTION REPRESENTED BY THE DIRECTOR OF
INDUSTRIES & COMMERCE, THIRUVANANTHAPURAM.

4. STATE OF KERALA REPRESENTED BY THE
SECRETARY TO GOVERNMENT, TAXES DEPARTMENT,
SECRETARIATE, THIRUVANANTHAPURAM.

BY ADV.SHRI.C.K.GOVINDAN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)No. 27630/2005

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE CERTIFICATE ISSUED BY THE DIRECTOR (VILLAGE INDUSTRIES), KERLA KHADI & VILLAGE INDUSTRIES BOARD, THIRUVANANTHAPURAM DATED NIL.

P2 : COPY OF THE PERMANENT SSI REGISTRATION CERTIFICATE DATED 22/4/1999 ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT.

P3 : COPY OF THE APPLICATION DATED 13/01/2005 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

P4 : COPY OF THE AGENDA NOTE SUBMITTED BY THE DIRECTOR OF INDUSTRIES AND COMMERCE BEFORE THE STATE LEVEL COMMITTEE MEETING HELD ON 28/10/2004.

P5 : COPY OF THE LETTER DATED 23/12/2004 SENT BY THE DIRECTOR OF INDUSTRIES AND COMMERCE TO THE GENERAL MANAGER, DISTRICT INDUSTRIES CENTRE, IDUKKI.

P6 : COPY OF THE APPEAL DATED 29/12/2004 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

P7 : COPY OF THE ORDER DATED 17/06/2005 PASSED BY THE DIRECTOR OF INDUSTRIES OF COMMERCE.

P8 : COPY OF THE ASSESSMENT ORDER DATED 24/3/2006 PASSED BY THE 1ST RESPONDENT.

// TRUE COPY //

PA TO JUDGE

jg

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 27630 of 2005 L

Dated, this the 29th day of March, 2007

J U D G M E N T

Petitioner is challenging Ext.P7 order whereunder the State declined Sales Tax exemption for the petitioner's industry under SRO 1729/93, which provides for sales tax exemption for 7 years for new SSI units. Petitioner was financed by Khadi & Village Industries Board and therefore petitioner opted for benefit of exemption available to products of Khadi industry, which was granted to the petitioner under Ext.P1. It is seen that the exemption enjoyed by the petitioner was total and complete, as petitioner is a project of Khadi and Village Industries. However, exemption available under SRO 1729/93 for SSI unit was subject to limit that exemption to be claimed is up to 100% of the investment in fixed assets, when exemption available to Khadi & Village Industries was limited to 21 industries w.e.f. 01/01/2000, petitioner lost the benefit of sales tax exemption as petitioner's industry was not covered in the 21 industries. However, still petitioner was enjoying concessional rate of tax at 4% treating petitioner as a project of Khadi & Village Industries. Benefit of

exemption later claimed under SRO 1729/93 was declined by the District Level Committee after taking clarification from Director of Industries vide Ext.P4 for the reason that petitioner after availing exemption and later concessional rate applicable to Khadi units cannot switch over to SSI benefits. It is against this order petitioner went to the State Level Committee, which declined relief to the petitioner and against that order this WP(C) is filed. Counsel for the petitioner contended that petitioner opted for exemption applicable to Khadi & Village Industries because petitioner was reasonably expecting exemption to continue. However, it is seen that even after withdrawal of Khadi exemption from 01/01/2000, claim for exemption as SSI unit was made by the petitioner for the first time after three years of withdrawal of exemption, during which period petitioner obviously collected and remitted concessional rate of tax @ 4% applicable to Khadi Units. Therefore, I do not find the grievance of the petitioner is genuine in as much as it was a conscious option of exemption for some time and later benefit of concessional rate for the remaining period. Petitioner cannot claim benefits simultaneously under different notifications, the schemes of which are not similar. In the circumstance, I do not find any

ground to interfere with Ext.P7. More over, petitioner after collecting and remitting tax at 4% from 01/01/2000 onwards made an effort for exemption after three years which is liable to be dismissed on grounds of delay alone. In the circumstances, WP(C) is dismissed as devoid of any merit.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg